City of Pullman
Public Works Division
M E M O R A N D U M

TO: Washington Department of Ecology

FROM: Mark Workman, P.E., Public Works Director
Kevin Gardes, P.E., Deputy Public Works Director

RE: Comments on *Formal Draft Phase II Permit for Eastern Washington*

DATE: May 19, 2006

This memorandum is submitted in response to Ecology's request for comments on the *Formal Draft Phase II Permit for Eastern Washington.*

General:

We feel the cost burden to a community of Pullman's size will be substantial, and question whether the benefits will be commensurate with the costs. It is debatable whether Pullman should be included in Phase II as it has not yet been determined that our stormwater contributes to any water quality impairments. The city currently has design standards that require erosion and sediment control plans be submitted and approved with new development, and require stormwater detention and biofiltration when certain thresholds have been met. These standards have been in place for a long time. We reference Ecology stormwater technical references for best available practices. We address high risk land uses such as car washes, auto repair/maintenance shops, etc., with special requirements. We require enhanced detention in one particularly sensitive sub-basin within the city. With new construction we dye test the sewer connections to verify the sanitary sewer lines are not inadvertently connected to the storm drain system. A TMDL is just getting underway on the South Fork of the Palouse River, and it would be appropriate to wait until the TMDL is complete before determining whether Pullman should be included in the Phase II stormwater program. We formally request that Pullman not be included in Phase II until the outcome of the South Fork Palouse TMDL is determined. This is especially appropriate as we are a bubble community and not automatically mandated by the federal regulations to be included in Phase II.

Pullman and the surrounding area are characterized by rolling hills, steep slopes and highly erodable soils. The relative impermeability of the soil virtually eliminates the use of infiltration for stormwater treatment, which results in close to 100% runoff. Agriculture is the primary land use in the surrounding area, and results in highly turbid runoff far outweighing contributions from the city stormwater system. Benchmarks such as the 25 NTU threshold in the Construction Stormwater General Permit are essentially impossible to meet at times, and quite frankly wouldn't matter much because the contribution from agricultural land is so much higher, both in quantity and turbidity levels.

In the *Municipal Stormwater NPDES Report to the Legislature January 2004* submitted by the eastern Washington stormwater group (referenced in the permit fact sheet) a number of common themes and perspectives were outlined, some of which are highlighted below and are especially relevant to Pullman:

1. Many eastern Washington jurisdictions will have significant difficulty paying for the required stormwater management program.
2. The permit should be written based on the minimum federal requirements.
3. Requirements should be developed to maintain equity to businesses.
4. Compliance should be based on meeting narrative, not numerical standards.

These concerns are further justification for not including Pullman in Phase II at this time, and letting the results of the TMDL determine when, and if, Pullman should be included in the future. Pullman is surrounded by large non-point sources. We are eager to understand the proportional pollutant loads when considering such large non-point sources as agricultural in our area. One of the concerns expressed to the legislature early on in this process is that the permit requirements "Needed to provide meaningful environmental benefits. – permit fact sheet". If Pullman's water quality impacts from municipal stormwater are a drop in the bucket relatively speaking then that needs to be factored into future water quality management decisions for the South Fork of the Palouse. This will be determined during the TMDL and load allocation process, which may not require any reduction in loading from the municipal stormwater system. In fact, the permit fact sheet states "None of the TMDLs to date established load allocations or waste load allocations for municipal stormwater discharges covered under this permit." The South Fork of the Palouse is an extremely complex system and our limited financial resources need to be expended to gain the most benefit.

<u>Specific Comments:</u>

1. There seems to be a general assumption in the permit that BMPs will not be effective in meeting water quality standards. Why else is the Permittee required to evaluate the effectiveness of the SWMP components implemented during the reporting period. There are also monitoring requirements identified in Section 8. If Pullman becomes a Phase II city we will likely implement Ecology approved BMPs from the Stormwater Management Manual for Eastern Washington. On page 15 of the formal draft it states "Permittees who choose to use the BMP selection, design, installation, operation and maintenance standards in the *Stormwater Management Manual for Eastern Washington* (2004), or another technical stormwater manual approved by the Department, may cite this reference as the sole documentation that the ordinance or regulatory mechanism is protecting water quality, reducing the discharge of pollutants to the MEP, and satisfying state AKART requirements." For this first permit cycle we should only be implementing these Ecology approved BMPs. If the receiving water is not meeting water quality standards then a TMDL is required that will identify pollutant sources and allocations, which may or may not be related to municipal stormwater. At this point it is inappropriate to assume that application of these BMPs is insufficient. Therefore, the evaluation of BMP effectiveness (S5.A.4.b, S8.B.2) and all long-term monitoring (S8.C) should be eliminated from this permit cycle.

2. Some of the compliance dates/deadlines for secondary permittees are shorter than for primary permittees. One example where major differences exist is in "Illicit Discharges".

(1) The secondary permittee is required to adopt policies prohibiting illicit discharges, and identify enforcement mechanisms, **within one year** of permit coverage. They are required to develop and implement an enforcement plan **within 18 months** of permit coverage.

The primary permittee has **2 years** from the effective date of the permit to adopt an illicit discharge ordinance. The primary permittee has **4.5 years** to develop and implement the enforcement plan and illicit discharge program.

Changing the deadlines of the secondary permittee to match those of the primary permitttee would better facilitate cooperative efforts and programs. Because negotiation is involved in this type of agreement the longer of the two dates should be utilized.

3. The City commented on the Construction Site Stormwater Runoff Control subsection (S5, B.4) during the preliminary draft permit comment phase. Since this section has not been substantially modified we have the same comment. If the City implements this program it is duplicative of Ecology's effort with the Construction Stormwater NPDES general permit (CSGP). Duplication of efforts by public entities is a waste of resources and money, therefore this element of the stormwater program should stay with Ecology where it is being administered now. The fact that a contractor would have to apply for a permit from Ecology and the City for essentially the same thing would be both confusing and frustrating.

4. In Section S2.C it states "This permit authorizes discharges resulting from fire fighting activities unless the discharges from fire fighting are identified as significant sources of pollutants to waters of the State". 40 CFR 122.26(b)(2) exempts discharges resulting from fire fighting activities without any exceptions. Public safety should be of primary concern, therefore, the words "unless the discharges from fire fighting are identified as significant sources of pollutants to waters of the State" should be removed.

5. In Section S4.C it states "The Permittee shall reduce the discharge of pollutants to the maximum extent practicable (MEP)." This should be rewritten to state that if the Permittee is meeting the permit terms and conditions then MEP is met.

6. In Section S5.A.4.a, rewrite to give one year from the effective date to have a program in place, not as written to occur from the effective date of the permit.

7. Section S5.A.4.a.ii. This section requires Permittees to track and report the cost of their SWMP. The permit fact sheet says "The cost and resources available to implement the SWMP are not part of the basis for determining MEP for this permit term. However, data on SWMP-related expenditures are needed to evaluate the MEP standard established in future permits". The fact sheet gives a very detailed breakdown of Ecology's cost reporting expectations, concluding with the statement that "Ecology is not expecting jurisdictions to make accounting changes to track these costs, nor are Permittees expected to differentiate between current spending on SWMP implementation versus new spending to meet the requirements of the permit." Since the cost of implementation is not the basis for determining MEP, and since the permit complies with the

Clean Water Act, Ecology should remove the financial reporting requirement. The fact sheet states that Ecology intends to set an MEP standard with regard to program resources in future permit cycles. This approach directly contradicts the local jurisdiction's authority and flexibility as allowed in the Clean Water Act. Ecology should indicate by what statutory authority it can require this information and to what program objective it applies.

8. Section S5.B.3.b.iv, Bullet 1

"Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing and pipeline hydrostatic test water."

"The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources,..." EPA Model Ordinances Language

Fire hydrant flow testing is performed annually to maintain the municipalities fire ratings issued by the Fire Rating s Bureau. These ratings affect the property insurance rates. It is important to flow test hydrants to determine whether there is adequate flow for fire fighting purposes and whether the flow meets the Uniform Fire Code.

Section S5.B.3.b.iv, Bullet 1

"...hyperchlorinated water line flushing..."

This item was discussed at the last eastern Washington Stormwater meeting and it was agreed the AWWA specification was to be added to this section.

Section S5.B.3.b.iv, Bullet 2

"...landscape irrigation runoff must be reduced..."

This statement implies a continuous water quality impact from landscape runoff, no matter at what volume or content. An across the board and ongoing requirement to reduce is neither achievable nor linked to any program objective.

Section S5.B.3.b.iv, Bullet 3

"...pH-adjusted if necessary..."

The requirement for pH adjustment should be removed or better defined. De-chlorination techniques that do not create adverse pH conditions should be promoted and those with adverse pH impacts restricted or prohibited.

Section S5.B.3.b.iv, Bullet 3

"...pH adjusted if necessary, re-oxygenated..."

The requirement for pH adjustment and re-oxygenation should be removed. These provisions are in essence numeric water quality standards and are not consistent with the BMP approach in the permit.

Section S5.B.3.b.iv, Bullet 4

"Permittees must minimize the amount of street wash and dust control water used. At active construction sites, street sweeping must be performed prior to washing the street."

Most construction activity related to earthwork and grading occurs during the summer months, when precipitation is minimal. Dust control is a major issue at construction sites and water is the primary method for controlling dust. Street sweeping is also useful and appropriate at times. It should be left up to each individual jurisdiction to manage dust control as required, given that air quality impacts need to be considered as well.

9. Section S5.B.3.c.v

The permit lays out enforcement program requirements for local illicit discharge ordinances.

Since the permit provides a long list of discharges to be prohibited by the ordinance, including landscape irrigation runoff and street wash water, these enforcement program requirements should be narrowed in their application to illicit industrial or commercial discharges and formal investigations and enforcements of normal residential activity should not be included. Applying a strict enforcement program calendar to discharges that carry requirements to reduce and minimize undesirable discharges is bound to create confusion and unenforceable ordinances. This compliance program is best applied to industrial and commercial illicit discharges. If Ecology will require an enforcement program against the full list of prohibited discharges it must include criteria more flexible and applicable to the severity and type of violation.

10. Section S5.B.3.a.iii

The permit requires submission of agency mapping information to Ecology.

This requirement is overbroad and should be rewritten to include a map of say outfalls, if that is the information Ecology desires. Submission of agency mapping to Ecology and/or other entities covered under this permit seems excessive.

11. Section S5.B.3.b.i

The permit requires an ordinance prohibiting illicit discharges on private property.

Presumably this ordinance shall prohibit illicit discharges to the MS4, when an element of the MS4 resides on private property. This language should be clarified that only illicit discharges to the MS4 are prohibited.

12. Section S5.B.2.a

"No later than one year from the effective date of this permit ....create opportunities for the public to participate in the decision making processes involving the development, implementation and update of the SWMP..."

This paragraph has the potential to expose a local agency to third party lawsuits. The local governing body has the final say on development and implementation of the SWMP and those decisions are based on finances, staff and local resources. This paragraph gives local public groups the ability to make decisions not based on finances, staff or local resources.

Paragraph should read "Not later than one year from the effective date of this permit...create opportunities for the public to participate in the public process involving the development, implementation and update of the SWMP based on local agency finances, staff and resources, including development...."

13. Section S5B.3.c.ii

The second and third paragraph on page 32 of the Permit **Fact Sheet** refers to this section on field assessments and includes the statement "As an ongoing activity, but not as a requirement of the permit, Permittees should identify areas of industrial activity served by the MS4 that require coverage under the Industrial General Permit, determine whether coverage has been obtained, and inform the Department if coverage has not been obtained."

Ecology should eliminate all statements in the fact sheet that state that Permittees should perform a function not required by the permit. Ecology indicates in several places that it does not have the resources to regulate stormwater in the manner intended by the Clean Water Act and has elected to structure its permit to eliminate the need for additional resources within Ecology to manage the program. In this case Ecology is suggesting that local jurisdictions carry an enforcement role for a state permit without resources to support the effort.

14. Section S5.B.6.a.i

The permit requires an undefined evaluation of existing flood management projects associated with the MS4 to "determine whether changes or additions should be made to improve water quality."

The permit is based on the premise that applying the BMP program to existing MS4 facilities will result in improved water quality. This required evaluation suggests a program of capital retrofits that is not required by the MEP standard and should be removed.

15. Section S5.B.5.a.i Bullet 3

The section requires that records be kept from the time the permit is effective, but allows Permittees to delay program development related to post-construction site stormwater management for several years.

The records to be kept are not defined and the requirements to inspect sites are confusing. It could be read the records establish a backlog of sites to be inspected when the program inspections begin, thus putting every agency in a catch-up mode with regard to inspections. This should be clarified that inspections are required only of sites permitted after the effective date of the program element, not on the backlog of sites for which records are kept.

Thank you for considering our comments. Again we formally request that Pullman not be included in the Phase II program at this time and wait until the TMDL process is complete to determine the appropriate course of action.